Public Prosecutor v Hing Chen Loong & Anor

HIGH COURT (SANDAKAN) — CRIMINAL REVISION NO S43–02 OF 2000
RICHARD MALANJUM J
5 APRIL 2000

Criminal Procedure *— Sentence — Management of brothel for prostitution purposes — Fine and five days imprisonment imposed — Whether manifestly inadequate — Sentence must deter others from committing same offence — No force or aggravating factors in commission of offence, whether relevant in sentencing — Court must consider public interest — Intention of legislature considered — Women and Girls Protection Act 1973 s 21(1)*

The first and second accused were charged under s 21(1) of the Women and Girls Protection Act 1973. Both accused pleaded guilty. The magistrate sentenced the first accused to five days imprisonment and a fine of RM10,000 while the second accused was sentenced to five days imprisonment and a fine of RM6,000. The High Court judge was made aware of the matter through a member of the public and directed the relevant officers to call for the docket/record of proceedings for his perusal. On the expiry of the appeal period, there was no appeal lodged from either the prosecution or the accused. The High Court judge heard the matter as a criminal revision case to satisfy himself on the correctness, legality or propriety of the sentences passed upon the accused.

Held, enhancing the term of imprisonment to 12 months and nine months respectively:

(1) A High Court judge can move to exercise his revisionary power even when there is no request. The authorities consistently indicated that the knowledge of the cases could come from external sources. As such, the calling of this instant case was in order (see p 178G–H).

(2) Having perused the record of proceedings of the magistrate's court and after hearing submissions, the court found the sentences imposed upon the accused, in particular as regards the custodial sentence, to be manifestly inadequate having regard to the circumstances of the case thereby resulting in a miscarriage of justice. Indeed, the requirement that only in exceptional cases that a sentence should be revised upward had been satisfied in the instant case (see p 179A–C).

(3) Overall in passing the sentences upon the accused, the magistrate obviously paid only lip service for the need to consider public interest as a paramount consideration. Although the magistrate did say that the offence committed by the accused was a serious offence and that public interest required that a sentence must not only deter the accused but also deter others from committing the same offence, the sentences imposed upon the accused did not reflect such a spirit (see p 179C, H–I).

(4) The approach taken by the magistrate in taking into account that there was no force or aggravating factors had imposed an additional ingredient to the offence upon which the accused were charged. There is nothing in the provisions of s 21(1) and (3) of the Act indicating that force or cruelty would make a difference in the sentence to be meted out on offenders under the section. Hence the court found that the magistrate took into account irrelevant matters when imposing the sentences on the accused (see pp 180I–181A).

(5) In view of the penalty provided for such an offence, anyone convicted should be dealt with so as to reflect the intention of the legislature that such offence should not be taken lightly. Those entrusted to dispense justice in this country would be failing in their duties if the clear intention of the legislature is not reflected in the sentences being imposed to the offenders such as the accused (see p 181C–E).

(6) In substituting the sentences passed by the magistrate, the court took into account not only public interest and such other relevant factors in sentencing but also the mitigation made by the accused. Public interest demands that vice activities should be dealt with so as not only to punish the accused but also to send a strong signal to would-be offenders (see p 182C–E).

(7) The 12 months and nine months custodial sentences imposed upon the accused respectively on revision should be considered as being on the lighter side since the penalty for the offence is imprisonment for not more than five years. The imposition of five days imprisonment by the magistrate was indeed manifestly inadequate in the circumstances of the case (see p 182G–H).

[Bahasa Malaysia summary

Tertuduh pertama dan kedua telah dituduh di bawah Akta Perlindungan Wanita dan Gadis 1973. Kedua-dua tertuduh telah mengaku bersalah. Majistret telah menghukum tertuduh pertama lima hari penjara dan denda sebanyak RM10,000 sementara tertuduh kedua dihukum lima hari penjara dan denda sebanyak RM6,000. Mahkamah Tinggi telah sedar mengenai perkara tersebut melalui seorang awam dan mengarahkan pegawai-pegawai berkenaan untuk memanggil ke doket/rekod-rekod prosiding untuk penelitiannya. Di akhir tamatnya tempoh untuk rayuan, tiada rayuan telah difailkan daripada pihak pendakwa atau tertuduh. Hakim Mahkamah Tinggi mendengar perkara tersebut sebagai semakan jenayah untuk memuaskan diri akan kebetulan, kesahan atau kewajaran hukuman-hukuman yang dikenakan ke atas tertuduh.

Diputuskan, meningkatkan tempoh pemenjaraan kepada 12 bulan dan sembilan bulan masing-masing:

(1) Hakim Mahkamah Tinggi boleh bertindak untuk menjalankan kuasa semakan walaupun tiada permohonan dibuat. Autoriti-

A autoriti menunjukkan secara konsisten bahawa pengetahuan kes boleh timbul daripada sumber-sumber luaran. Dengan itu, panggilan semula kes tersebut adalah teratur (lihat ms 178G–H).

(2) Selepas membaca rekod prosiding-prosiding mahkamah majistret dan selepas mendengar hujahan-hujahan, mahkamah mendapati B hukuman-hukuman yang dikenakan ke atas tertuduh terutamanya berkenaan dengan hukuman pemenjaraan, adalah secara jelas tidak mencukupi memandangkan keadaan-keadaan kes menyebabkan pembawaan ketidakadilan undang-undang. Sudah tentu, keperluan bahawa hanya di dalam kes-kes yang luar biasa bahawa suatu hukuman yang disemak patut ditambah telah C dipuaskan di dalam kes ini (lihat ms 179A–C).

(3) Secara keseluruhannya, di dalam menjatuhkan hukuman-hukuman ke atas tertuduh, majistret dengan jelas kurang memberi perhatian kepada keperluan untuk mempertimbangkan kepentingan awam sebagai pertimbangan utama. Walaupun D majistret tersebut pernah katakan kesalahan yang dilakukan oleh tertuduh adalah kesalahan yang serius dan bahawa kepentingan awam memerlukan bahawa hukuman bukan sahaja menghindarkan tertuduh tetapi juga menghindarkan yang lain daripada melakukan kesalahan yang sama, hukuman-hukuman yang dikenakan ke atas tertuduh tidak membayangkan semangat E sedemikian (lihat ms 179C, H–I).

(4) Pendekatan yang diambil oleh majistret di dalam mengambil kira bahawa tidak terdapat paksaan atau faktor-faktor buruk telah mengenakan lagi suatu bahan kepada kesalahan di mana tertuduh telah dituduh. Tiada apa-apa di dalam peruntukan s 21(1) dan F (3) Akta tersebut yang menunjukkan bahawa paksaan atau kezaliman akan membawa perbezaan di dalam hukuman yang dikenakan ke atas pesalah-pesalah di bawah seksyen tersebut. Dengan itu, mahkamah mendapati bahawa majistret telah mengambil kira perkara-perkara yang tidak berkaitan semasa mengenakan hukuaman-hukuman ke atas tertuduh (lihat G ms 180I–181A).

(5) Memandangkan penalti yang diperuntukkan untuk kesalahan sedemikian, sesiapa yang disabitkan patutlah ditangani agar membayangkan niat perundangan bahawa jenayah-jenayah kesalahan sedemikian tidak patut dipandang ringan. Sesiapa yang H diamanahkan untuk melaksanakan keadilan di dalam negara ini akan gagal di dalam kewajipan mereka jika niat jelas perundangan tidak dibayangkan di dalam hukuman-hukuman yang dikenakan ke atas pesalah-pesalah seperti tertuduh (lihat ms 181C–F).

(6) Di dalam menggantikan hukuman yang dijatuhkan oleh majistret, I mahkamah mengambil kira bukan sahaja kepentingan awam dan faktor-faktor lain yang berkaitan dengan hukuman tetapi juga faktor peringanan yang dibuat oleh tertuduh. Kepentingan awam menuntut bahawa aktiviti maksiat patutlah ditangani agar ia

bukan setakat menghukum tetapi juga memberikan amaran kuat kepada bakal pesalah-pesalah (lihat ms 182C–E). A

(7) Hukuman 12 bulan dan sembilan bulan penjara masing-masing yang dikenakan ke atas tertuduh patutlah dianggap sebagai ringan kerana penalti bagi kesalahan tersebut adalah pemenjaraan tidak lebih daripada lima tahun. Pengenaan hukuman pemenjaraan lima hari oleh majistret adalah jelas tidak mencukupi di dalam keadaan-keadaan kes (lihat ms 182G–H).] B

Notes

For cases on sentence generally, see 5 *Mallal's Digest* (4th Ed, 1997 Reissue) paras 2475–3049. C

Cases referred to

Gek Sing a/l Kaliappan v PP [1999] 6 MLJ 641 (refd) D
JB Jeyaretnam, Re; An Advocate and Solicitor [1988] 1 MLJ 353 (refd)
Liaw Kwai Wah & Anor v PP [1987] 2 MLJ 69 (refd)
Mohd Abdullah Ang Swee Kang v PP [1988] 1 MLJ 167 (refd)
Mohd Dalhar bin Redzwan & Anor v Datuk Bandar, Dewan Bandaraya Kuala Lumpur [1995] 1 MLJ 645 (refd)
PP v Au Seh Chun [1998] 6 MLJ 179 (refd) E
PP v Muhari bin Mohd Jani & Anor [1996] 3 MLJ 116 (refd)
PP v Mustapha bin Abdullah [1997] 2 MLJ 424 (refd)
PP v Roslan bin Imun [1999] 3 MLJ 659 (refd)
Shanmugam v PP [1971] 1 MLJ 283 (refd)

F

Legislation referred to

Women and Girls Protection Act 1973 s 21(1), (3)

Zahir bin Hussien (Deputy Public Prosecutor, Attorney General's Chambers Kota Kinabalu) for the prosecution. G

James Tsai (*Kalsum Mohd Noor* with him) (*Lim Guan Sing & Co*) for the accused.

Richard Malanjum J

Introduction H

On 9 March 2000, I heard this matter as a criminal revision case whereupon I made the following order after hearing the submissions of the learned deputy public prosecutor and the learned counsel for the accused, viz.:

Court: Having perused the record of proceedings in these consolidated cases and having heard learned DPP and learned counsel for the accused, in the exercise of my revisionary power under ss 323–327 of the CPC, I am of the view that this is an appropriate case that I should interfere with the I

sentences passed upon the accused by the lower court. In doing so I bear in mind what was said in the case of *Liew Kwai Wah* as cited by learned counsel for the accused.

Hence, in the exercise of my revisionary power, I hereby set aside the sentences imposed upon the accused by the lower court and substitute them as follows:

To: (i) For the first accused, I hereby sentence you to a term of imprisonment of 12 months less the five days that you had served earlier as pronounced by the learned magistrate. In short, I enhanced the term of imprisonment from five days to 12 months.

But as for the fine imposed, it should be reduced to RM5,000 in default six months imprisonment. Thus, the excess is to be refunded, if paid.

(ii) For the second accused I hereby sentence you to a term of imprisonment of nine months less the five days that you had served as pronounced by the learned magistrate. Thus, the sentence of the second accused is also enhanced to a term of imprisonment from five days to nine months.

As for the fine, I hereby reduce it to RM3,000 in default three months imprisonment. Any excess paid is to be refunded.

I will give my full grounds in the event of an appeal.

And at the commencement of the hearing, I stated thus:

Court: This matter originated in the Magistrate Court Sandakan. After its disposal (two cases consolidated) I was made aware of it through a member of the public. I therefore directed the relevant officers to call for the docket/record of proceedings for my perusal. At the same time the appeal period was still running.

On the expiry of the appeal period, there was no appeal lodged from either the prosecution or the accused.

Having called for the docket/record of proceedings it was my intention to satisfy myself on the correctness, legality or propriety of the sentences passed upon the accused (see s 323 of the CPC.) In particular it was my intention to satisfy myself as to whether in all the circumstances of the case the sentences passed were manifestly inadequate. And having perused the docket/Record of Proceedings I am of the view that, in the exercise of my discretionary revisionary power under the CPC, I should call for this case to be heard before me. Hence the hearing this morning. I would request both the learned DPP and learned counsel for the accused to assist in this hearing.

After making the aforesaid order I indicated that I would give my reasons in the event of an appeal being pursued. On 30 March 2000, I was informed that an application for leave had been filed with the Court of Appeal. Hence, this is therefore the grounds referred to earlier.

The charges and brief facts A

The charges preferred against each of the accused read as follows:

(a) To the abovenamed accused

That you, HING CHEN LOONG (M) are charged and the charge against you is as follows:

That you between the month of January 1999 to 29 December 1999 at Lot 15 A & B, Block B, Ground Floor, Hsiang Garden, Jalan Jeila, in the District of Sandakan, in the State of Sabah being the tenant of such premises did manage a brothel in the said premises to wit you engaged the service of the following women for the purpose of prostitution for various clients: B C

1 Khajija Sua (20) (Tagalog)
2 Emelis De Les Reyus (30) (Tagalog)
3 Laila Salih (25) (Tagalog)
4 May Ann Horado (19) (Tagalog)
5 Juliet Macalaguing (29) (Tagalog)
6 Anna Thore Evangelesta (25) (Tagalog)
7 Laila Edris Lara (18) (Tagalog) D
8 Venessa Angelis Santos (21) (Tagalog)
9 Rhose Franco (20) (Tagalog)
10 Ednalyn Morales (20) (Tagalog)
11 Anna De Vera (20) (Tagalog)
12 Christine Dabrat (15) (Tagalog)
13 Maricor Gellacone (20) (Tagalog) E
14 Jacquilyn Mancao (19) (Tagalog)
15 Jenalyn Ilagan (21) (TagalogJ
16 Emely Reyes (18) (Tagalog)
17 Mitch Porocho (18) (Tagalog)
18 Lady Ann Ong (17) (Tagalog)
19 Grace Christobel (21) (Tagalog) F
20 Ruth Reyes Alario (19) (Tagalog)
21 Glenda Terres Macray (20) (Tagalog)
22 Gemma Aller (20) (Tagalog)
23 Imelda Ramos Domantay (30) (Tagalog)

and that you have thereby committed an offence under s 21(1) of the Women and Girls Protection Act 1973 (Act 106) and punishable under s 21(3) of the same. G

(b) To the abovenamed accused

That you, LOO TUNG CHEE (M) are charged and the charge against you is as follows:

That you between the month of October 1999 to 29 December 1999 at Lot 15 A & B, Block B, Ground Floor, Hsiang Garden, Jalan Jeila, in the District of Sandakan, in the State of Sabah did assist one Hing Chen Loong (M) in the management of a brothel at the said premises to wit you sought to engage the service of the following women for the purpose of prostitution for various clients: H

1 Khajija Sua (20) (Tagalog) I
2 Emelis De Les Reyus (30) (Tagalog)
3 Laila Salih (25) (Tagalog)
4 May Ann Horado (19) (Tagalog)

5 Juliet Macalaguing (29) (Tagalog)
6 Anna Thore Evangelesta (25) (Tagalog)
7 Laila Edris Lara (18) (Tagalog)
8 Venessa Angelis Santos (21) (Tagalog)
9 Rhose Franco (20) (Tagalog)
10 Ednalyn Morales (20) (Tagalog)
11 Anna De Vera (20) (Tagalog)
12 Christine Dabrat (15) (Tagalog)
13 Maricor Gellacone (20) (Tagalog)
14 Jacquilyn Mancao (19) (Tagalog)
15 Jenalyn Illagan (21) (Tagalog)
16 Emely Reyes (18) (Tagalog)
17 Mitch Porocho (18) (Tagalog)
18 Lady Ann Ong (17) (Tagalog)
19 Grace Christobel (21) (Tagalog)
20 Ruth Reyes Alario (19) (Tagalog)
21 Glenda Terres Macray (20) (Tagalog)
22 Gemma Aller (20) (Tagalog)
23 Imelda Ramos Domantay (30) (Tagalog)

and that you have thereby committed an offence under s 21(1) of the Women and Girls Protection Act 1973 (Act 106) and punishable under s 21(3) of the same.

At the trial in the magistrate court, the learned deputy prosecutor referred to such charges as the amended charges to the earlier 23 charges preferred against the accused.

Upon the application by the prosecution the hearing of the respective charges were consolidated. Thereafter the accused entered their pleas of guilty respectively.

The brief facts as tendered by the learned deputy prosecutor before the learned magistrate read as follows:

> On 29 December 1999 at about 4.15 pm, acting on information received, a police party led by Chief Inspector Rodziah Abd Rashid from the police HQ Kepayan, Kota Kinabalu, raided Prince Steam Bath & Fitness Centre, a business premise situated at Block B, Ground Floor, Hsiang Garden, Jalan Leila, Sandakan, which premise was believed to be carrying out immoral activities.
>
> During the said raid, the police party apprehended and arrested the following persons who were in the said premise at that time.
>
> They were namely:
>
> 1 Khajija Sua (F) Tagalog
> 2 Emelis Des Les Reyus (F) Tagalog
> 3 Laila Salih (F) Tagalog
> 4 May Ann Horado (F) Tagalog
> 5 Juliet Macalaguing (F) Tagalog
> 6 Mohd Rijah b Doni (M) Bajau
> 7 Rozaini bin Doni (M) Bajau
> 8 Mulyadi bin Alpini (M) Bajau
> 9 Azman bin Astrail (M) Bajau

10 Abdul Jaya bin Baharum (M) Bajau

11 Loo Tung Chee (M) Cina

12 Juneey bin Juhari (M) Bajau

A search was conducted and during the search the police party seized the following items as per appendix A.

All the Filipino women who were arrested admitted that they were engaged by the accused Hing to engage in prostitution in the said premise and in return they were paid commission by the said Hing Chen Loong the accused. This was confirmed by the cleaners (boys) who admitted recovering used condoms in dustbins inside the rooms used by the Filipino women to service their clients.

Police investigation also revealed that the premise was owned by Syarikat Kong Dar Hong Sdn Bhd. They rented the premise to Hing Chen Loong, the accused, since 1997. Initially the business carried out in the said premise was strictly as per in the trading licence.

However sometime in January 1999, the accused without the knowledge of the local authorities started employing Filipino women to work as prostitutes in his business premise. In return, he paid these women commission for the sexual services they had rendered to the respective clients.

Further police investigation also revealed that Hing Chen Loong the accused employed one Loo Tung Chee and one other who is still at large as his supervisor. Loo Tung Chee started working at Prince Steam Bath, sometime in October 1999. As a supervisor his main duty was to entertain client. A client who required the sexual services of any of these women will be shown by Loo Tung Chee photographs of all the Filipino women available. These Filipino women are as per in the charge sheet (For the court's information, all of them have been arrested and are awaiting deportation). Each photograph bore a number, eg 1, 2, 3 and clients would inform Loo Tung Chee of the women they had selected via the number as per in the photograph and Loo Tung Chee in turn would call the selected women who were residing within the premises but in another building. A receipt bearing the selected women's number and the service rendered will be issued to the client who in turn would present the receipt to the cashier.

To illustrate, for example in the case of girl No 5 in the charge sheet. The number given to her by the management is No 1. If her service is required, Loo Tung Chee or the other supervisor will call her from the other building where she and the other women are staying. Upon her arrival, she would then be introduced to her client where upon she would then be taken to a room made available by the supervisor. There, sex would then be performed and normally such sexual activities would be for a period of one hour. For every client that she performed sexual activities with, she would be paid by Hing Chen Loong a commission of RM60 but this would only be paid to her at the end of the month.

Hing Chen Loong was arrested on 1 January 2000 at 10.30 pm at the Sandakan Police Station. Both he and Loo are on court bail.

APPENDIX A

(1) 7 biji kondom jenis Response dan 1 jenis partner, 1 packet pil perancang jenis Marrelon mengandungi 8 biji pil.

(2) 6 biji tong sampah warna hijau (2), kuning (2), biru (1), merah (1), mengandungi bekas tisu dan kondom terpakai.

(3) 1 buah buku kehadiran kerja perempuan dan resit pelanggan (1).

(4) 1 lesen perniagaan No E 929989 atas nama Hing Loong.

(5) 1 kotak berisi kondom mengandungi 44 pek kecil di dalamnya jenis Response.

(6) 3 resit pembayaran pelanggan bertarikh 29 December 1999, 19 resit pembayaran tarikh 28 Disember 1999, 8 resit pembayaran pelanggan tarikh 27 Disember 1999.

(7) Gambar-gambar perempuan bernombor dan tidak bernombor.

(8) 7 keping Pas Lawatan No 236004, 820444, 820445, 820446, 928822, 928821, 928820.

(9) 9 buah Passport No DD 084045, EE 638509, DD 674266, EE 545568, AA 323091, BB 797342, DD 892431, BB 877982, CC 706229.

(10) 4 kotak ubat nama Paciline, 4 kotak K-Y Lubricating Jelly, 2 kotak jel nama Tar Gel.

(11) 6 batang anak kunci bilik Relax Room 1–6.

And upon their convictions recorded by the trial court the learned counsel for the accused in mitigation said these:

D/C: I mitigate for both accused. Both accused had demonstrated their remose for the commission of offence by the virtue of their guilty plea as well as co-operation that they had rendered to police during investigation of this case. There is no evidence that they have attempted to temper with any prosecution witness. Certainly plea of guilty has many advantages to this country in term of saving costs due to lengthy trial as well as convenience of this Honourable Court — I do not have to go through lengthy trial — save the inconveniences and the embarassement of all parties concerned — witness — the 23 Filipino girls involved.

I believe in terms of relationship and co-operation with Philippines as member of Asia, the speedy disposal of this case will do a lot in promoting the relationship of both countries. The first accused as revealed by his recruiting has entrusted his business to one Indra Bangsawan — who is still at large and assisted by second accused — Indra is responsible for recruiting massage girl. First accused did say — what they do behind my back — is beyond my knowledge.

However the interest of quick disposal of the case ... .

DPP: Objection — to last sentence which sounds like disputing the facts — 'word behind my back'

D/C: [withdrawing the part on knowledge.]

Court: Continue.

D/C: Because of this case the accused had further demonstrated his remorse by renting the premises to other party. The accused has given up totally this type of business.

In his first accused — his wife did not agree to such activity running massage parlour. This his first time — being charged in court.

This experience was put on first and second accused causing mental distress — waiting case to be tried and anxiously the outcome — especially — during the Chinese New Year — as if no Chinese New Year. Both accused were remanded too almost a week before bail out. In respect of first accused — the bail was RM92,000.

The second accused RM20,000

Total RM112,000.

Both this amount paid by first accused — instruction some money borrowed from friend with interest. The first accused in fact has incurred substantial loss — because of the interest — this money cannot be utilised for his business purposes.

After the accused has been — both keeping a very low profile because this case is widely known to Sandakan community into prostitution — it appear these ladies resort to this vice on their own free will to make a living.

In view of that I submit that this is not a case a deterrent sentence would be appropriate — as both accused are not persistent offender. *PP v Jafar bin Daud* [1981] 1 MLJ 315.

Cited — first page — last sentence.

Page 5 — CPC extract — CP — Tan Yoke Lin second para. Raza Izuddin Shah.

I submitted a more serious case — newspaper cutting — corruption cases the embarassment and stigma of embarassment as convicted person.

To certain extent — his business of first. accused has been affected although running other business discotheque and Sepilok Inn.

Conviction — make it ... whether first accused can continue to be active in business as usual the kind of patronage that he received before the commission of this offence.

Brief facts of this case does not reveal any aggravating factors no mention either of accused committed violence on the women concerned — nor did both accused force the ladies where accused was given bound over.

Second accused — we only merely assisting. Certainly his means has to be taken into account.

What even they have gone through from the day they got arrested is enough punishment.

That's all.

In response to the above the learned deputy in seeking for deterrent sentences submitted thus:

Offence of both accused have committed serious in nature, it attracts the maximum sentence — five years or a fine of 10,000. The offences both accused is organised in nature — from the facts adduced by the PO, the accused started operating since January 1999. Throughout the period, he has escape detention from authorities. That's how organised their activities are — They need the assistance of the Kepayan Polis to detect their activities. Although both pleaded guilty. I urged the court — to take into account public

A interest — Malaysia is a muslim country — activities of such country is no good for the image of the country. Therefore again I urged the court to pass an appropriate sentence on the accused.

Both accused were thereafter sentenced respectively and in the words of the learned magistrate as follows:

B Notwithstanding the above said factors I still view the offence as serious in nature and public interest should be taken into account. Public Interest requires that a sentence must not only to deter the accused but also to deter others from committing the same offence. However in view of the strong mitigation factors I sentence the first accused to five days and a fine of RM10,000 i/d 1 year jail while the second accused is sentences to five days C imprisonment and a fine of RM6,000 i/d six months jail.

Taken into account that the first accused and the second accused were earlier remanded for a period of five days and five days respectively and by virtue of s 7(2)(6) of the prison act which provides that a Lock Up shall be deemed to be a prison for the purpose of Chapter XXVII of the CPC (On Sentencing) I humbly declare that both accused have served their D imprisonment sentence. The fines have to be paid today.

That might have been the end of the episode if not for the view expressed by a member of the public as I have alluded to hereinabove. And I am of the opinion that notwithstanding the absence of an appeal from either of the parties in this instant case I should be entitled to invoke the revisionary E power as provided under the Criminal Procedure Code ('the Code'). There is no necessity that this court can only exercise such power if there is an application by either party. Indeed in the case of *PP v Muhari bin Mohd Jani & Anor* [1996] 3 MLJ 116, his Lordship KC Vohrah J in clear term said this at p 1223:

F There are many ways in which the attention of the High Court judge may be drawn to cases where decisions made in the subordinate courts may have to be revised; through newspaper reports of cases, through letters by members of the public or by aggrieved parties or by their relatives, through requests by magistrates or judges of the sessions court for revision of the decisions they had made; and through formal applications like the one filed by the brother of the deceased.

G (See also *PP v Roslan bin Imun* [1999] 3 MLJ 659 where the learned judge came to know of the case through the newspapers reports and exercised his revisionary power even before the appeal period expired; *PP v Au Seh Chun* [1998] 6 MLJ 179 where the High Court received a letter on the matter; *PP v Mustapha bin Abdullah* [1997] 2 MLJ 424 — where the judge read the H case in the newspaper).

The power of revision

The relevant sections in the Code on the revisionary power of a High Court judge are as follows:

I 323 Power to call for records of inferior courts

(1) A judge may call for and examine the record of any proceeding before any inferior criminal court for the purpose of satisfying

himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior court. A

(2) Orders made under ss 97 and 98 are not proceedings within the meaning of this section.

324 Power to order further inquiry B

(1) On examining any record under the last preceding section, or otherwise, a judge may direct the magistrate to make, and the magistrate shall make, further inquiry into any complaint which has been dismissed under s 135; or into the case of any accused person who has been discharged.

(2) The provisions of s 303A shall apply for the construction of subsection (1). C

325 Powers of jugde on revision

(1) A judge may, in any case the record of the proceedings of which has been called for by himself or which otherwise comes to his knowledge, in his discretion, exercise any of the powers conferred by ss 311, 315, 316 and 317 of this Code. D

(2) No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard, either personally or by advocate, in his own defence.

(3) Nothing in this section shall be deemed to authorize a judge to convert a finding of acquittal into one of conviction. E

326 Permission for parties to appear

No party has any right to be heard, either personally or by advocate, before a judge when exercising his powers of revision: provided that such judge may, if he thinks fit, when exercising such powers hear any party, either personally or by advocate, and that nothing in this section shall be deemed to affect sub-s (2) of the last preceding section. F

327 Orders on revision

When a case is revised under this chapter by a judge he shall certify his decision or order to the court by which the finding, sentence or order revised was recorded or passed stating, where such finding, sentence or order has been varied, the grounds for such variation; and the court to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified and, if necessary, the record shall be amended in accordance therewith. G

The local law reports are replete with cases on the point of revisionary power of a High Court judge in this country. But I should first consider the case of *Liaw Kwai Wah & Anor v PP* [1987] 2 MLJ 69 (SC) where his Lordship Abdul Hamid CJ (Malaya) (as he then was) said this at pp 70–71: H

Power of revisions

Section 31 of the Courts of Judicature Act 1964 confers on the High Court, in respect of criminal proceedings and matters in the subordinate courts, the powers of revision. And s 323(i). Criminal Procedure Code (the Code), empowers a judge to call for and examine the record of any proceeding before I

any inferior criminal court for the purpose of satisfying himself as to the correctness, legality or propriety of any finding, sentence, or order recorded or passed. Section 325 of the Code further provides that in any case, the record of proceedings of which had been called for by the judge himself or which otherwise comes to his knowledge, the judge may, in his discretion, exercise any of the powers conferred by ss 311, 315, 316 and 317 of the Code. Among the powers set out in s 325(i), Criminal Procedure Code, is the power of the court to enhance or alter the nature of the sentence imposed (see also s 316(b) of the Code).

Object of revision

We would observe that the power of revision is to be exercised in accordance with the law for the time being in force relating to criminal procedure. In the present case that law is the Criminal Procedure Code. We would also observe that the object of the revisionary powers provided for in the Code is:

> '... to confer upon criminal courts a kind of paternal or supervisory jurisdiction, in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions or apparent harshness of treatment, which has resulted on the one hand in some injury to the due maintenance of law and order, or on the other hand, in some undeserved hardship to individuals.'
>
> (*Emperor v Nasrullah & Ors* AIR 1928 All 287).

It is also clear that the High Court may examine the record of proceedings in the subordinate courts 'wherever it considers that in doing so the purpose of justice will be served, as for example, when the record discloses no offence or when the accused is subjected to a vexatious and groundless prosecution. (*Ramanathan Chettiyar v Subrahmanya Ayyar* ILR 47 Mad 722).

Duty of High Court

Basically, the duty lies with the High Court to see that the criminal law is properly administered by an inferior court.

The judge's duty is to satisfy himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceedings of such inferior court. Where, for instance, a convicted person has scrupulous objection to invoke the jurisdiction of a High Court, either on a question of legality of conviction or error of law concerning the conviction or sentence, the judge ought to call for and examine the record with a view to exercising the revisionary power to correct a miscarriage of justice.

Power is discretionary

The High Court's power sitting in revision is discretionary. As it is, it must therefore be exercised judicially and within the limits and in the spirit of the legislation. 'Discretion' is defined in *Words and Phrases Legally Defined* Vol 2 (2nd Ed) at p 82 to read:

> 'Discretion' means that when it is said that something is to be done within the discretion of the authorities that something is to be done according to the rules of reason and justice, not according to private opinion: *Rooke's Case* (1598) 5 Co Rep 996); according to law and not humour. It is to be, not arbitrary, vague, but legal and regular. And it must be exercised within the limit to which an honest man competent to the discharge of his

office ought to confine himself: *Wilson v Rastall* (1792), 4 Term Rep at p 757).' (*Sharp v Wakefield* (1891) AC 1 73 (HL), per Lord Halsbury LC at p 179.)

Maxwell on *The Interpretation of Statutes* (12 Ed) at pp 147–148, under the heading 'The exercise of discretion must be reasonable', states that:

'Even though an act done is ostensibly in execution of a statutory power and within its letter, it will nevertheless be held not to come within the power if done otherwise than honestly and within the spirit of the enactment. A discretion is to be "regulated according to known rules of law (*Lee v Bude & Torrington Junction Ry Co* (1871) LR 6 CP 576, per Willes J at pp 580, 581), and not the mere whim or caprice of the person to whom it is entrusted on the assumption that he is discreet ... 'It is true,' said Lord Greene MR in *Associated Provincial Picture Houses, Ltd v Wednesbury Corp*, [1948] 1 KB 223, at p 229), 'the discretion must be exercised reasonably." '

The principles which should guide the courts in the exercise of the revisionary powers have been clearly set out by Jenkins CJ in *Emperor v Lachiram* ILR 28 Bom 533. In that case his Lordship said that 'this controlling power of the court is a discretionary power and it must be exercised with regard to all the circumstances of each particular case, anxious attention being given to the said circumstances, which vary greatly'.

Re Soo Leot [1956] MLJ 54, Buhagiar J following the principles laid down by Jenkins CJ in *Emperor Lachiram* held that '*the powers of the High Court in revision are exercisable at the discretion of the court and that discretion is untrammelled and free, so as to be fairly exercised according to the exigencies of each case.* (Emphasis added.)

And at p 71 his Lordship continued:

At this point we wish to observe that a judge may use the power of revision to increase a sentence only in exceptional cases. He is not to assume the role of a public prosecutor. The law is clear in that the public prosecutor is vested with a right to appeal against any sentence which he feels is manifestly inadequate. The power of revision is therefore to be used sparingly and should remain a discretionary power to be exercised primarily for purposes of correcting a miscarriage of justice (see the observation of Hepworth J in *Re Radha Krishna Naidu* [1962] MLJ 130). (Emphasis added.)

In the case of *PP v Muhari bin Mohd Jani & Anor* [1996] 3 MLJ 116, KC Vohrah J went on to discuss the implication of the observation of the then Supreme Court in *Liaw*'s case in particular on the issue of a High Court judge, when in exercising his revisionary power, he is minded to enhance the sentence passed by the lower court. This is what his Lordship said at pp 124–127:

Principles Relating to Revision

Under s 31 of the Courts of Judicature Act 1964 ('the CJA'), the High Court may exercise powers of revision in respect of criminal proceedings and matters in subordinate courts in accordance with any law for the time being in force relating to criminal procedure. The CPC is the law for the time being in force. In the CPC, Ch XXXI, ss 323–327 relate to revision. It has to be pointed out that there are another three provisions — ss 35, 36 and 37 of the CJA — relating to revision, with s 35 giving general supervisory and revisionary

jurisdiction over all subordinate courts in any criminal or civil matter or proceedings.

Having set out the statutory provisions, it behoves the court to examine the relevant case law. In *PP v Kulasingam* [1974] 2 MLJ 26, Hashim Yeop Sani J (as he then was) stated the essence of what the High Court should have in mind when considering a revision (at the same page):

> The powers of the High Court in revision are amply provided under s 325 of the Criminal Procedure Code subject only to sub-ss (ii) and (iii) thereof. The object of revisionary powers of the High Court is to confer upon the High Court a kind of 'paternal or supervisory jurisdiction' in order to correct or prevent a miscarriage of justice. In a revision the main question to be considered is whether substantial justice has been done or will be done and whether any order made by the lower court should be interfered with in the interest of justice.'

Buhagiar J in *Re Soo Leot* [1956] MLJ 54 referred to Jenkins CJ's discussion in relation to this wide discretionary power of revision given to the court, where the Chief Justice recalled the words of an English judge as regards the argument that judicial discretion had deprived judges of the power the legislature had given to judges and agreeing it had not in *R v Lachiram* ILR 28 Bom 533. This is the statement of Jenkins CJ which Buhagiar J set out with approval (at p 55).

If we have been entrusted with the responsibility of a wide discretion, we should be the last to attempt to fetter that discretion, and whenever it is argued that judicial decision has deprived us of the power that the legislature has given us, I recall the words of an eminent English judge:

> 'I desire to repeat', he said, 'what I have said before, that this controlling power of the court is a discretionary power and it must be exercised with regard to all the circumstances of each particular case, anxious attention being given to the said circumstances, which vary greatly. For myself; I say emphatically that this discretion ought not to be crystallized, as it would become in course of time, by one judge attempting to prescribe definite rules with a view to bind other judges in the exercise of the discretion which the legislature has committed to them. This discretion, like all other judicial discretions ought, as far as practicable, to be left untrammelled and free, so as to be fairly exercised according to the exigencies of each case'.

These weighty words appear to me to breathe the spirit that should guide us in the exercise of our discretionary powers of revision. This may perhaps increase our responsibilities and add to our labours, but no one would shirk the one or grudge the other.

The (then) Supreme Court in *Liaw Kwai Wah & Anor v PP* [1987] 2 MLJ 69 referred to Buhagiar J's reliance (in *Re Soo Leot*) on what Jenkins CJ had stated in *R v Lachiram* relating to judicial discretion. The Supreme Court at p 71 clearly approved the concept 'that the powers of the High Court in revision are exercisable at the discretion of the court and that discretion is untrammelled and free, so as to be fairly exercised according to the exigencies of each case'.

The Supreme Court also clearly approved Jenkins CJ's dictum at pp 70–71 that 'this controlling power of the court is a discretionary power and it must be exercised with regard to all the circumstances of each particular case, anxious attention being given to the said circumstances, which vary greatly'.

The Supreme Court in Liaw Kwai Wah, however, did 'observe' that a judge may use the power of revision to increase a sentence only in exceptional cases. A perspective of the context of this observation has to be set out first.

In that case, there was a reference under s 66(1) of the CJA which raised two questions for the determination of the Supreme Court. One of the questions was whether the High Court was right in ruling — after an order of whipping had been carried out on two persons — that it had the power to increase the number of strokes. In the trial before the High Court judge, the two persons had been convicted on their pleas of guilty on the offence of armed robbery and sentenced to imprisonment for two years and one stroke of the rattan each. After the sentences of whipping were duly carried out, the High Court judge — acting in revision — enhanced the sentence of imprisonment on each of the persons to five years and the sentence of whipping to five strokes. There was no reference on the matter of the increase of the term of imprisonment. *The Supreme Court ruled, in respect of the increase of the strokes, that the CPC prohibits whipping to be executed in instalments and that in the circumstances, it was clearly improper for the learned judge to exercise his revisionary power to impose additional strokes of whipping. Having decided this — and this is the ratio decidendi of the case* — the Supreme Court made this observation at p 71:

> 'At this point we wish to observe that a judge may use the power of revision to increase a sentence only in exceptional cases. He is not to assume the role of a public prosecutor. The law is clear in that the public posecutor is vested with a right to appeal against any sentence which he feels is manifestly inadequate. The power of revision is therefore to be used sparingly and should remain a discretionary power to be exercised primarily for purposes of correcting a miscarriage of justice (see the observation of Hepworth J in *Re Radha Krishna Naidu* [1962] MLJ 130).'

It has to be noted the above passage of the Supreme Court makes reference to the observation of Hepworth J in Re Radha Krishna Naidu where the decision had nothing to do with the revision of a sentence. In the case, a private summons case, the magistrate dismissed the case and acquitted the accused. The complainant in the case tried to file a notice of appeal but it was rejected. The complainant argued that he did not require the sanction of the deputy public prosecutor to appeal.

The issue was brought to the High Court with a view to its acting in revision. Hepworth J stated that under the provisions of the Criminal Procedure Code (Cap 21) (then applicable to Penang), when an accused person had been acquitted by a sessions or magistrates' court, there shall be no appeal except by the public prosecutor — and *it is in this context that the observation (referred to by the Supreme Court) of Hepworth J has to be understood.* Hepworth J's observation (at p 131) is set out below, and to be noted is that ss 300 and 322 of the Criminal Procedure Code (Cap 21) mentioned in the passage correspond to ss 306 (appeal against acquittal with sanction of the Public Prosecutor) and 325 (powers of judge on revision) respectively:

> 'It is, however, necessary for me to consider what action I should take, if any, on revision as there is no doubt about the jurisdiction of this court either upon an application of a private individual or when the case is referred to it by a magistrate that this court can interfere by way of revision under the provisions of s 322 of the Criminal Procedure Code. In such cases if the public prosecutor has not preferred an appeal under

A s 300 the High Court ought not to interfere under s 322. It *should only exercise revisionary powers in exceptional cases when there has been a denial of the right of a fair trial or it is urgently demanded in the interests of public justice. In my opinion the legislature does not intend that a private party shall secure by an application in revision a right which is reserved for the public prosecutor only.*'

B *Coming back to the observation of the Supreme Court, the observation has also to be understood in the context of an extant statutory provision, s 325 of the CPC.* Pursuant to his revisionary powers, the judge may — as provided for in s 325(i) of the CPC — exercise any of the powers conferred by ss 311, 315, 316 and 317 of the CPC. Under s 316 the judge may, inter alia:

C '... alter the finding, maintaining the sentence, or with or without altering the finding reduce or enhance the sentence or alter the nature of the sentence.'

An application of the latter limb of this provision is seen in the of quoted case of *Chunbidya & Ors v Emperor* (referred to earlier), where the judicial committee of the Privy Council refused to grant leave to appeal to four D petitioners who had had their sentences of transportation for life imposed on a conviction of murder by a divisional sessions judge revised by the High Court to that of death.

Viewing the observation of the Supreme Court in the context of the earlier principles of law that the Supreme Court had itself enunciated, and bearing in mind the statutory provisions of the law which give the High Court E the power to revise sentences and the context of Hepworth J's observation, it seems clear that the Supreme Court by its observation could not have meant to have put a strait-jacket so tight on the High Court that the High Court is barely able to exercise the revisionary powers given by a statutory provision to alter a sentence upwards. Clearly, even if it is 'to be used sparingly', it has to be exercised 'with regard to all the circumstances of each particular case, F anxious attention being given to the said circumstances, which vary greatly' and the thrust would be primarily for the purposes of correcting a miscarriage of justice, again bearing in mind the essence underlined by Hashim Yeop Sani J (as he then was) in *PP v Kulasingam* [1974] 2 MLJ 26 (at the same page):

G 'In a revision the main question is whether substantial justice has been done or will be done and whether any order made by the lower court should be interfered with in the interest of justice.'

It is not as if the High Court has not previously intervened to revise sentences upwards. Under similar powers under the Indian Criminal Procedure Code, the Lahore High Court revised the sentences of two constables upwards for a similar offence under s 330 of the Indian Penal Code (see *Lal Muhammad & H Anor v Emperor* (1936) 3 7 Cr LJ 811). As recent as I990, in respect of other offences, the Supreme Court of India in *Shahab Singh & Ors v State of Haryana* [1990] 1 SCR 512 and in *Govind Ramji Jadhav v State of Maharashtra* [1990] 1 SCR 855 approved the enhancement of sentences by High Courts acting in revision although no appeals had been made by state authorities. In *Shahab Singh*, the Supreme Court stated:

I The failure on the part of the state government to prefer an appeal does not, however, preclude the High Court from exercising suo motu power of revision under s 397 read with s 401 of the Code since the High Court

> itself is empowered to call for the record of the proceeding of any court subordinate to it. Sub-section 4 of s 401 operates as a bar to the party which has a right to prefer an appeal but has failed to do so but that subsection cannot stand in the way of the High Court exercising revisionary jurisdiction suo motu. (Emphasis added.)

I have no reason to depart from what the learned judge said on the observation of the then Supreme Court in *Liaw*'s case in particular when he said this:

> ... it seems clear that the Supreme Court by its observation could not have meant to have put a strait-jacket so tight on the High Court that the High Court is barely able to exercise the revisionary powers given by a statutory provision to alter a sentence upwards. Clearly, even if it is 'to be used sparingly', it has to be exercised 'with regard to all the circumstances of each particular case, anxious attention being given to the said circumstances, which vary greatly' and the thrust would be primarily for the purposes of correcting a miscarriage of justice, ...

Thus, I agree with his Lordship KC Vohrah J that the observation of the then Supreme Court on the prerequisite of being an 'exceptional case' before a High Court judge exercises his revisionary power to enhance a sentence imposed by the lower court should be considered in the context as discussed therein.

Be that as it may I am also very conscious of what the majority in the Court of Appeal said in the case of *Mohd Dalhar bin Redzwan & Anor v Datuk Bandar, Dewan Bandaraya Kuala Lumpur* [1995] 1 MLJ 645. In that case his Lordship Gopal Sri Ram JCA speaking for the majority said this at p 655:

> The second principle of settled law is that, save in exceptional cases and for very good reasons, (there can be no resort had by a party) to the revisionary jurisdiction of the High Court when the decision complained of is appealable and no appeal has been lodged. *Dorai Manickam v R* [1936] MLJ 261.

And at pp 656–657 his Lordship went on to say this:

> Liaw Kwai Wah on the other hand is authority for two propositions. First, that there is a duty on the High Court to call for the record of a subordinate court once a request in that behalf has been made. Second, that the power to revise sentences imposed by an inferior court should be exercised sparingly.

Incidentally and with all due respect, I do not think that a High Court judge can only move to exercise his revisionary power when there is a request. The cases cited hereinabove consistently indicated that the knowledge of the cases could come from external sources. As such it is my judgment that the calling of this instant case was in order.

And as to whether the requirement that it should only be in exceptional cases that a sentence should be revised upward I think the view of his Lordship KC Vohrah J in *PP v Muhari bin Mohd Jani & Anor* is relevant. In any event whether such exceptional circumstances exist is a question solely to be determined on the circumstances of each particular case. After all what constitute exceptional and special reasons must necessarily depend on

A the facts of each case. (see *Shanmugam v PP*[1971] 1 MLJ 283; *Re JB Jeyaretnam, An Advocate and Solicitor* [1988] 1 MLJ 353).

Reasons for the enhancement of the sentences

Having perused the record of proceedings of the magistrate's court and after
B hearing the submissions of the learned deputy and the learned counsel for the accused I proceeded to enhance the sentences of the accused as stated hereinabove. I found the sentences imposed upon the accused, in particular as regards the custodial sentences, to be manifestly inadequate having regard to the circumstances of the consolidated cases thereby resulting in a miscarriage of justice. Indeed, in my judgment, the 'exceptional'
C requirement as observed in *Liaw*'s case has been satisfied in the instant case. And my reasons for coming to such a finding are as follows:

(1) Overall in passing the sentences upon the accused the learned magistrate obviously paid only lip service for the need to consider public interest as a paramount consideration. And on that issue this is
D what his Lordship KC Vohrah J said in *PP v Muhari bin Mohd Jani & Anor* at pp 132–133:

> Public Interest
>
> Per Abdoolcader J (as he then was) in *PP v Teh Ah Cheng* [1976] 2 MLJ 186 at p 187:
>
> E
> > 'In sentencing generally the public interest must necessarily be one of the prime considerations ... public interest should never be relegated to the background and must of necessity assume the foremost importance.'
>
> One aspect of public interest is the principle of retribution.
>
> F
> Lord Lawton in the Court of Appeal case of *R v Sarjeant* (1974) 60 Cr App R 74, in giving the judgment of the court, referred to the classical principle of retribution in sentencing (he did also refer to the other principles of deterrence, prevention and rehabilitation). His Lordship said that the Old Testament concept of an eye for an eye and a tooth for a tooth no longer plays any part in criminal law and continued:
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> G
> > '*There is, however, another aspect of retribution which is overlooked: it is that society, through the courts, must show its abhorrence of particular types of crime, and the only way in which they, the courts, can do this is by the sentence they pass. The courts do not have to reflect public opinion. On the other hand, courts must not disregard it. Perhaps the main duty of the court is lead public opinion.*' (Emphasis added.)
>
> H
> On deterrence, Lord Lawton remarked that there are 'two aspects of deterrence — deterrence of the offender and deterrence of likely offenders'. Deterrence to likely offenders is another aspect of public interest.

No doubt the learned magistrate did say in his brief ruling that the
I offence committed by the respective accused was a serious offence and that public interest required that a sentence must not only to deter the accused but also to deter others from committing the same offence.

Unfortunately, having said such salutary statement the sentences he imposed upon the accused did not reflect such a spirit. A

And perhaps it may also be appropriate here to say that the learned magistrate should have considered that in 'dispensing justice, magistrates should not be oblivious of the feel of the temperature outside their courts and continue to adopt the same approach in sentencing while (as here) there is laughter in the air outside by certain characters on their way to the bank' per *Vincent Ng J in Gek Sing a/l Kaliappan v PP* [1999] 6 MLJ 641 at p 650. I find the foregoing statement apt in view of the disclosure in the Brief Facts that the women and the girls were paid RM60 in commission per client by the first accused and it was not denied that the activities had been going on since January 1999. If the first accused could pay such an amount to the women and the girls then it would not be far from truth that he must have been receiving quite a sum from each client. B C

(2) From the brief ruling of the learned magistrate he appeared to have accepted wholesale whatever the learned counsel for the accused had said. For instance, there was nothing in the brief facts as given by the learned deputy public prosecutor that the accused rendered cooperation to the police during the investigation. The learned counsel for the accused said that and yet it was taken by the learned magistrate that such was a fact. Further, the learned magistrate also accepted as a fact that the remand of the accused must have caused them 'mental distress' and thus should be taken as a factor in imposing the sentences upon them. However, save for the assertion by the learned counsel for the accused there was nothing for the learned magistrate to rely upon to come to such a conclusion. D E F

(3) The learned magistrate also took into account that there was no force or aggravating factors given in the Brief Facts as tendered by the Prosecution. With respect I think such an approach had imposed an additional ingredient to the offence upon which the accused were charged. Section 21(1) and (3) of the Women and Girls Protection Act 1973 ('the Act') read: G

> 21 Suppression of brothels
>
> (1) Any person who keeps or manages or assists in the management of a brothel shall be guilty of an offence under this section.
>
> (3) Any person who is guilty of an offence under this section shall be liable on conviction to imprisonment for a term not exceeding five years or to a fine not exceeding ten thousand ringgit or to both such imprisonment and fine; and on a second or subsequent conviction be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding fifteen thousand ringgit or to both such imprisonment and fine. H

I find nothing in those provisions indicating that force or cruelty would make a difference in the sentence to be meted out on offenders under the section. Hence I find that the learned magistrate took into I

account irrelevant matters when imposing the sentences on the accused.

(4) The learned magistrate also failed to consider what was said by the learned deputy in reply to the mitigation by the learned counsel for the accused. In particular the fact that the illicit activities were very organized showed that the accused were determined to hide their illegal operation from detection by the relevant authorities. And indeed they succeeded for almost a year and if not for the letter from the Philippines Embassy as disclosed by the learned deputy who appeared before me such activities could have continued to this day. Surely this fact alone should have prodded the learned magistrate of the difficulty in detecting this type of offence. As such anyone convicted should be dealt with so as to reflect the intention of the legislature that such offence should not be taken lightly. And I say so in view of the penalty provided for such an offence. If it has been the intention of the legislature that such an offence should not be considered as serious then the penalty provided for therein would have reflected that intention.

(5) The learned magistrate should have also taken into account that the women and the girls employed by the accused were foreign nationals and as stated by the prosecuting deputy that such activities could affect the image of the country especially when Islam is her national religion. To allow such light sentences imposed upon the accused to stand could be interpreted as though this country acquiesces such illicit activities. The penalty provided for by the Act for such an offence only goes to show that that is not the case and thus those entrusted to dispense justice in this country would be failing in their duties if the clear intention of the legislature is not reflected in the sentences being imposed to offenders such as the accused herein.

(6) I also noted that some of the girls involved were quite young. One particular girl was recorded in the charge as only 15 years old. However I find that the learned magistrate was not disturbed by such a fact. Otherwise it would have reflected in his ruling when he imposed the sentences upon the accused. And although for no obvious reason the learned deputy who appeared before me went at great length to say that those ages stated in the charge could not be verified I found it odd that such a move was taken knowing well that such a fact had already been presented before the trial court. That being the case I think it was too late in the day for the learned deputy to correct any error that might have been made. That fact should therefore be left as such.

(7) I have also found one unsatisfactory aspect in the conduct of the trial before the learned magistrate. I note that certain items whereby the tendering as exhibits could have probably embarrassed some people were dispensed with. For instance, (i) item 6 — '3 resit pembayaran pelanggan bertarikh 29 Disember 99, 19 resit pembayaran bertarikh 28 Disember 1999, lapan resit pembayaran pelanggan bertarikh

27 Disember 1999'; and (ii) item 7 — 'gambar-gambar perempuan bernombor dan tidak bernombor', were not tendered as exhibits. The excuse given for being unable to tender item 6 in my view is quite a lame one. Surely the duty to bring the item to court could have been delegated to another officer. Perhaps it is opportune to remind ourselves of what was said by a judge on the importance of transparency:

> Letting in the sunshine transcends individual uneasiness and embarrassment and lends public confidence and integrity to the court process. Justice can never survive behind walls of silence' — Howard Spitz — Family Court Judge —1997.

The custodial sentences

In setting aside the sentences passed by the learned magistrate and substituting thereof the sentences as described hereinabove I took into account not only public interest and such other relevant factors in sentencing but also the mitigation made by the learned counsel for the accused not only before me but also in the lower court as recorded in the record of proceeding therein.

Meanwhile, public interest demands that vice activities should be dealt with so as not only to punish the accused but also to send a strong signal to would-be offenders that they might be able for a while to avoid the long arms of the law. However, once caught the appropriate punishment would be given to them so that others, hopefully, would not even think about committing such an offence. If light sentences were passed as in the instant case then would-be offenders would be tempted to go for it as the reward could outweigh the risk of being caught. I do not think such a move would help in maintaining public confidence in the judicial system of this country.

In passing the sentences as I did herein I was conscious of the guidelines propounded by his Lordship Mohd Azmi SCJ (later FCJ) in the case of *Mohd Abdullah Ang Swee Kang v Public Prosecutor* [1988] 1 MLJ 167 which, inter alia, at p 171 stated:

> It is generally accepted that the extent of the reduction on account of a plea of guilty would be between one-quarter and one-third of what otherwise would have been the sentence.

In the instant case the 12 months and nine months custodial sentences imposed upon the accused respectively on revision should be considered as being on the lighter side since the penalty for the offence is imprisonment for not more than five years. Bearing therefore the foregoing in mind the imposition of five days imprisonment by the learned magistrate is indeed manifestly inadequate in the circumstances of the consolidated cases before him.

And the reduction of the sums imposed as fines should further be taken as indication that justice has in fact been tempered with mercy.

Conclusion

It is for the foregoing reasons that I found it necessary to interfere with the sentences imposed by the learned magistrate upon the accused. And for the record I am compelled to say that in the course of the hearing I did not get much help from the prosecution. But I bear in mind that the hearing was a criminal revision where the purpose was to satisfy myself as to the correctness, legality or propriety of the finding, sentence or order, recorded or passed and as to the regularity of the proceedings in the magistrate court.

Term of imprisonment to 12 months and nine months enhanced respectively.

Reported by Jafisah Jaafar